

Message Text

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TO USMISSION IAEA VIENNA
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C O N F I D E N T I A L STATE 084394

E.O. 11652: GDS

TAGS: NERG

SUBJECT: DRAFT CONVENTION ON PHYSICAL PROTECTION OF
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NUCLEAR MATERIALS

REF: (A) STATE 36745; (B) STATE 77098; (C) IAEA VIENNA
2856

1. ROUGHLY ONE YEAR AGO, MISSION PASSED DRAFT CONVENTION
ON PHYSICAL SECURITY TO MISSIONS OF UK, FRANCE, USSR, FRG,
JAPAN AND CANADA (REF A). IN RESPONSE TO COMMENTS, WE
MODIFIED DRAFT; NEW DRAFT WAS SHOWN TO UK, FRANCE, FRG,
AND CANADA IN MEETINGS ASSOCIATED WITH NOVEMBER 1976

SUPPLIERS GROUP MEETING. FRG AND UK COMMENTED FURTHER. ANOTHER NEW DRAFT HAS BEEN DEVELOPED. WE ARE NOW PREPARED TO PRESENT THIS DRAFT TO ORIGINAL SIX, REST OF IAEA MEMBERS AND SECRETARIAT VIA SCENARIO OF PARA 4-6. WE HAVE TAKEN REF C INTO ACCOUNT BUT FEEL IT BEST TO PROCEED EXPEDITIOUSLY.

2. USG HAS NO DESIRE TO IMPEDE AGENCY'S EFFORTS IN THIS AREA. AT SAME TIME USG DOES WANT TO RETAIN CONTROL OF ITS INITIATIVE, THUS WE WILL GIVE DRAFT TO SECRETARIAT AT SAME TIME AND IN SAME MANNER AS AGENCY MEMBERS. MISSION AUTHORIZED TO DISCUSS PLAN WITH JOANNA BECKER IF THIS WILL BE

HELPFUL IN GETTING AGENCY SUPPORT.

3. ALTHOUGH THERE WAS SOME RESISTANCE INITIALLY TO CERTAIN PROVISIONS, WE NOTE, (A) OVERALL RESPONSE WAS MILDLY POSITIVE; (B) AT FEB. 24-MARCH 4, 1977, IAEA MEETING ON PHYSICAL PROTECTION, ADVISORY GROUP INVITED DG TO CONSIDER INITIATION OF PROCESS OF PREPARATION OF A CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR MATERIAL DURING INTERNATIONAL TRANSPORT, WHICH IS A CENTRAL COMPONENT OF PRESENT DRAFT.

4. MISSION SHOULD, THEREFORE, PASS DRAFT CONVENTION (PARA 7 BELOW) INDIVIDUALLY TO MISSIONS OF CANADA, UK, FRANCE, FRG, JAPAN, AND USSR, AND INFORM THEM THAT SHORTLY CONFIDENTIAL

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THEREAFTER WE WILL PASS DRAFT TO SECRETARIAT AND OTHER IAEA MEMBERS. IN CONVEYING TEXT, MISSION SHOULD MAKE POINTS IN PARA 7 BELOW AND INDICATE WE WOULD WELCOME COMMENTS.

5. APPROXIMATELY ONE WEEK AFTER PRESENTATION TO SIX, MISSION SHOULD PASS DRAFT TO ALL OTHER MISSIONS AND TO SECRETARIAT, INDICATING TO SECRETARIAT THAT WE HAVE DISTRIBUTED TEXT TO OTHER MISSIONS FOR COMMENT.

6. WE WOULD ALSO APPRECIATE MISSION'S VIEWS ON FOLLOWING SCENARIO:

(A) IN JUNE IAEA BOARD OF GOVERNORS MEETING REQUEST THAT AGENCY CONVENE EXPERTS MEETING DURING THE SUMMER TO REVIEW DRAFT.

(B) IN SEPTEMBER AT THE IAEA GENERAL CONFERENCE, SEEK AGREEMENT TO CONVENE A DIPLOMATIC CONFERENCE TO CONSIDER AND ADOPT THE DRAFT THAT COMES OUT OF THE EXPERTS MEETING.

7. MISSION SHOULD DRAW ON FOLLOWING TALKING POINTS IN TRANSMITTING DRAFT CONVENTION: (POINTS (B), (C), (D), (G), (H), WERE MADE WHEN DRAFT PROVIDED LAST YEAR AND MAY

BE MADE THIS TIME AT MISSION'S DISCRETION.):

(A) (FOR CANADA, UK, FRANCE, FRG, JAPAN AND USSR): DURING THE PAST YEAR, THE US HAS CIRCULATED TWO DRAFTS OF A PHYSICAL PROTECTION CONVENTION TO THE ORIGINAL SUPPLIERS GROUP. THIS THIRD DRAFT INCORPORATES THE RESPONSES TO EARLIER VERSIONS. WE INTEND, SHORTLY AFTER PASSING IT TO THE SIX, TO TRANSMIT IT TO THE IAEA SECRETARIAT AND TO THE REST OF THE AGENCY'S MEMBERS. IF SIX HAVE SUGGESTIONS THEY SHOULD COMMUNICATE IMMEDIATELY AND WE WILL ATTEMPT TO WORK INTO DRAFT BEFORE CIRCULATING.

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(B) FINAL DECLARATION OF NPT REVIEW CONFERENCE URGED ALL STATES ENGAGING IN PEACEFUL NUCLEAR ACTIVITIES TO ENTER INTO SUCH INTERNATIONAL AGREEMENTS AND ARRANGEMENTS AS MAY

BE NECESSARY TO ENSURE EFFECTIVE PHYSICAL PROTECTION OF NUCLEAR MATERIALS.

(C) IAEA GENERAL CONFERENCE ADOPTED RESOLUTION IN FALL OF 1975 CALLING ON MEMBER STATES TO CONSIDER WAYS AND MEANS OF FACILITATING INTERNATIONAL COOPERATION IN DEALING FURTHER WITH PROBLEMS OF PHYSICAL PROTECTION OF NUCLEAR FACILITIES AND MATERIALS.

(D) THE IMPORTANCE OF EFFECTIVE PHYSICAL PROTECTION WAS RECOGNIZED IN PARA. 3 OF THE GUIDELINES ADOPTED IN LONDON ON NOVEMBER 5, 1975, WHICH WAS SUBJECT OF EXCHANGE OF NOTES ON JAN. 27, 1976 AND FARTHER RECOGNIZED IN THE CRITERIA FOR LEVELS OF PHYSICAL PROTECTION ADOPTED IN LONDON ON JUNE 3, 1976. FYI(THIS POINT TO BE MADE ONLY TO 6.)ENDFYI.

(E) FORMER SECRETARY KISSINGER PROPOSED DRAFTING OF AN INTERNATIONAL CONVENTION ON PHYSICAL SECURITY IN 2 UNGA GENERAL ASSEMBLY SPEECHES.

(F) THE IAEA ADVISORY GROUP ON PHYSICAL PROTECTION, WHICH MET IN LATE FEB. AND EARLY MARCH, RECOMMENDED CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL IN INTERNATIONAL TRANSPORT. MISSION SHOULD STRESS PARA. 38 OF ADVISORY GROUP'S REPORT TO D.G.

(G) IT IS THE VIEW OF THE USG THAT, IDEALLY, PHYSICAL SECURITY CONVENTION SHOULD PROMOTE:

PROTECTION OF CIVILIAN FACILITIES AND MATERIALS AND PREVENTION OF THREATS AGAINST THEM, BY USE OF ADEQUATE PHYSICAL SECURITY MEASURES DURING USE, STORAGE AND TRANSIT OF NUCLEAR MATERIALS.
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CLEAR MATERIALS;

PROMPT DETECTION OF AND RAPID REACTION TO ANY LOSS, THEFT,
OR DIVERSION OF PEACEFUL NUCLEAR MATERIAL;

RAPID RECOVERY OF ANY LOST, STOLEN, OR DIVERTED MATERIAL;

PROMPT AND ASSURED PROSECUTION OF PERPETRATORS OF ANY ACTS
OR ATTEMPTS AGAINST NUCLEAR FACILITIES, MATERIALS OR TRANS-
PORTS; AND,

INTERNATIONAL COOPERATION TO ACCOMPLISH THESE PURPOSES.

(H) WE WOULD LIKE TO EMPHASIZE THAT WORK ON CONVENTION IS
NOT INTENDED TO PRECLUDE SIMULTANEOUS EFFORTS TO IMPROVE
PHYSICAL PROTECTION IN SHORTER TIME PERIOD, AND THROUGH
OTHER MEANS .WE WOULD BE SERIOUSLY CONCERNED IF WORK ON

CONVENTION DETRACTED FROM THE MOMENTUM WE HAVE ACHIEVED BI-
LATERALLY AND OTHERWISE TO UPGRADE THESE STANDARDS IN MANY
NATIONS.

(I) FOLLOWING IS DESCRIPTION OF PRINCIPAL FEATURS OF
DRAFT CONVENTION:

ARTICLE 1 EXPANDS THE DEFINITION OF NUCLEAR MATERIAL SO
THAT ALL PLUTONIUM IS COVERED. THIS IS IN LINE WITH CUR-
RENTREALIZATION THAT ALL PLUTONIUM IS POTENTIALLY DANGE-
ROUS. DEFINITIONS OF NUCLEAR MATERIAL IS OTHERWISE CONSIS-
TENT WITH IAEA STATUTE.

ARTICLE 2 IS INTENDED TO LIMIT THE SCHOP OF THE CONVENTION
TO CIVILIAN NUCLEAR MATERIALS, FACILITIES AND TRANSPORTS.

ARTICLE 3 RECOGNIZES THAT IMPLEMETATION OF MEASURES OF
PHYSICAL PROTECTION IS PRIMARILY AN INTERNAL RESPONSIBILITY
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OF EACH COUNTRY. THE ARTICLE REQUIRES EACH STATE PARTY TO
ENACT APPROPRIATE LAWS AND REGULATIONS AS ARE NECESSARY TO
ENSURE THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS AND
TRANSPORTS. IT TAKES INTO ACCOUNT THAT SPECIFIC MEASURES
ARE UPTO PARTICULAR COUNTRIES WHILE AT THE SAME TIME, RE-
COGNIZING THE UTILITY OF INFIRC/225 AND SIMILAR DOCUMENTS.
FYI(PARA.3(2) IS TAKEN FROM THE SUPPLIERS' GUIDELINES AND
DOES NOT BIND COUNTRIES TO USE INFIRC/225. IT SHOULD CAUSE
LESS DIFFICULTY THAN THE PROVISION ON THE FIRST DRAFT
WHICH MADE INFCIRC/225 MANDATORY)ENDFYI. THE PHRASE "UNDER
ITS JURISDICTION OR CONTROL ANYWHERE" IS INTENDED TO COVER
VESSELS AND AIRCRAFT REGISTERED IN A STATE OR COMPANIES IN-

CORPORATED IN A STATE, WHILE THEY ARE ABROAD.'

ARTICLE 4 COMMITS IMPORTING AND EXPORTING STATES PARTIES TO GET CERTAIN MINIMAL ASSURANCES OF PHYSICAL PROTECTION FROM STATES IN WHICH THE NUCLEAR MATERIAL WILL BE STORED DURING TRANSIT AND FROM STATES WHICH ARE TO BE TRANSITTED. THE CATEGORIES ARE SPECIFIED IN AN ANNEX THAT, BUT FOR THE FACT THAT FOOTNOTE (A) REFERS TO ALL PLUTONIUM, IS THE SAME AS THE ANNEX TO THE SUPPLIERS' GUIDELINES, FOOTNOTE

(A) OF WHICH REFERS TO PLUTONIUM AS DEFINED IN SUPPLIERS' TRIGGER LIST). FYI(T;IS ARTICLE IS WEAKER THAN THE ANALOGOUS ARTICLE IN THE FIRST DRAFT BUT THE LANGUAGE TRACKS THE GUIDELINES, SO THAT IT SHOULD BE MORE ACCEPTABLE THAN THE FIRST DRAFT.)ENDFYI. THE ARTICLE ALSO PUTS RESPONSIBILITY ON ORIGINATING AND TERMINATING STATES PARTIES, AS APPROPRIATE, TO GET ASSURANCES OF ASSISTANCE IN RECOVERY OPERATIONS.

ARTICLE 5 IMPLEMENTS ONE SENTENCE IN PARA. 6.2.11.3. OF INFCIRC/225 AND GOES SUBSTANTIALLY FURTHER IN SETTING UP PROCEDURES FOR THE RECOVERY OF LOST NUCLEAR MATERIALS. THESE PROCEDURES INVOLVE, IN ESSENCE, EXCHANGES OF INFORMATION CONCERNING LOSS OR THEFT AND COORDINATION OF CONFIDENTIAL

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MEASURES CONCERNING RECOVERY.

ARTICLE 6 COMMITS STATES PARTIES TO CRIMINALIZE CERTAIN OFFENSES INVOLVING NUCLEAR FACILITIES, TRANSPORTS OF MATERIALS. ALTHOUGH SPECIFICALLY DEFINED FOR THE PURPOSES OF THIS CONVENTION, THE OFFENSES ARE NUCLEAR VARIANTS OF STANDARD THEFT, BURGLARY AND CONSPIRACY OFFENSES. HOWEVER, CRIMES AKIN TO SABOTAGE ARE ALSO DEFINED. THE ARTICLE ALSO DEFINES INTERNATIONAL OFFENSES FYI (THIS IS IN RESPONSE TO THE CRITICISM THAT THE FIRST DRAFT MADE EXTRADITABLE OFFENSES OUT OF SOME CRIMES THAT WERE BASICALLY DOMESTIC. LIMITING NEW OFFENSES SUBJECT TO EXTRADITION TO CRIMES WITH AN INTERNATIONAL NEXUS SHOULD BE ACCEPTABLE TO MOST STATES) END FYI.

ARTICLES 7 THROUGH 13 ARE INSPIRED BY THE PROVISIONS OF THE HAGUE (HIJACKING), MONTREAL (SABOTAGE) AND UN PROTECTION OF DIPLOMATS CONVENTIONS AND TO A SIGNIFICANT EXTENT MODELED ON THE LATTER CONVENTION WHICH WAS ADOPTED BY CONSENSUS IN THE UN GENERAL ASSEMBLY. CANADA, UK, FRANCE, FRG, JAPAN, USSR AND US ARE PARTIES TO HAGUE CONVENTION. THE US CANADA, USSR AND FRG ARE PARTIES TO THE UN CONVENTION ON PROTECTION OF DIPLOMATS, WHICH CAME INTO FORCE IN FEB.

ARTICLE 7 PARALLELS ARTICLE 6 OF THE DIPLOMATS CONVENTION;
ARTICLE 8 PARALLELS ARTICLE 7 OF THE DIPLOMATS CONVENTION;

ARTICLE 9 PARALLELS ARTICLE 8 OF THE DIPLOMATS CONVENTION;
ARTICLE 10 PARALLELS ARTICLE 9 OF THE DIPLOMATS CONVENTION;
ARTICLE 11 PARALLELS ARTICLE 10 OF THE DIPLOMATS CONVENTION
ARTICLE 13 PARALLELS ARTICLE 12 OF THE DIPLOMATS CONVENTION
BUT COVERS LAWS AND REGULATIONS PROMULGATED UNDER ARTICLE
3 AS WELL AS UNDER ARTICLE 6. ARTICLE 9 INCORPORATES THE
ANALOGUE OF ARTICLE 3(1) OF THE DIPLOMATS CONVENTION.

THE MECHANISM ESTABLISHED BY ARTICLES 6, 7, 8, 9, SEEKS TO
ENSURE THAT NO PERSON WHO HAS COMMITTED ONE OF THE INTERNA-
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TIONAL OFFENSES LISTED IN ARTICLE 6 CAN FIND SAFE HAVEN IN
ANOTHER STATE PARTY'S TERRITORY. WHEN THE ALLEGED OFFEN-
DER IS PRESENT IN A STATE PARTY, IT MUST EITHER EXTRADITE
HIM (TO ONE OF THE STATES REFERRED TO IN PARA. 4 OF ARTICLE
9) OR SUBMIT THE CASE TO ITS COMPETENT AUTHORITIES FOR
PROSECUTION.

ARTICLES 14-19 ARE FAIRLY STANDARD FINAL ARTICLES. FYI
(THERE HAS BEEN SOME OBJECTION TO USE OF IAEA IN THESE
ARTICLES; IF OBJECTIONS REMAIN, UN SECRETARY GENERAL
COULD AS WELL BE USED.) END FYI.

8. TITLE OF CONVENTION: DRAFT CONVENTION ON THE PHYSICAL
PROTECTION OF NUCLEAR MATERIALS, FACILITIES AND TRANS-
PORTS

9. BEGIN TEXT.

THE STATES PARTIES TO THE CONVENTION

RECOGNIZING THE LEGITIMATE INTERESTS OF ALL STATES IN THE
POTENTIAL BENEFITS TO BE DERIVED FROM THE PEACEFUL APPLI-
CATION OF ATOMIC ENERGY,

CONCERNED OVER THE GRAVE DANGERS POSED BY THE POTENTIAL OF
THEFT AND MISUSE OF NUCLEAR MATERIALS,

CONVINCED OF THE NEED FOR EFFECTIVE MEASURES TO PROVIDE
FOR THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL,
DETERMINED TO COOPERATE AND COORDINATE EFFORTS
DESIGNED
TO EFFECT THE SPEEDY RECOVERY OF LOST OR STOLEN NUCLEAR MA--
TERIAL,

HAVE AGREED AS FOLLOWS:

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ARTICLE 1

FOR THE PURPOSES OF THIS CONVENTION:

(A) "NUCLEAR MATERIAL" MEANS PLUTONIUM, URANIUM 233, URANIUM ENRICHED IN THE ISOTOPES 233 OR 235, AND ANY MATERIAL CONTAINING ONE OR MORE OF THE FOREGOING "NUCLEAR MATERIAL. DOES NOT INCLUDE SOURCE MATERIAL.

(B) "SOURCE MATERIAL" MEANS URANIUM CONTAINING THE MIXTURE OF URANIUM ISOTOPES CONTAINED IN NATURE; URANIUM DEPLETED IN THE ISOTOPE 235; THORIUM; OR ANY OF THE FOREGOING IN THE FORM OF METAL, ALLOY, CHEMICAL COMPOUND OR CONCENTRATE.

(C) "NUCLEAR FACILITY" MEANS ANY EQUIPMENT INSTALLATION, OR PLANT WHICH STORES OR USES NUCLEAR MATERIAL IN ANY WAY, INCLUDING BUT NOT LIMITED TO THE USE FOR PRODUCTION, ENRICHMENT, SEPARATION, OR OTHER PROCESSING OF NUCLEAR MATERIAL, THE PRODUCTION OF ENERGY THROUGH NUCLEAR FISSION, OR RESEARCH ON OR WITH NUCLEAR MATERIAL.

(D) "NUCLEAR TRANSPORT" MEANS ANY VEHICLE, VESSEL OR AIRCRAFT WHILE IT IS ENGAGED IN THE TRANSPORT OF NUCLEAR MATERIAL.

(E) "OFFENDER" MEANS THE PERPETRATOR OF AN OFFENSE SET FORTH IN ARTICLE 6.

ARTICLE 2

THIS CONVENTION SHALL APPLY TO ALL NUCLEAR FACILITIES, NUCLEAR MATERIAL, AND NUCLEAR TRANSPORTS, OTHER THAN THOSE FACILITIES, MATERIALS, OR TRANSPORTS USED FOR MILITARY PURPOSES.

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ARTICLE 3

1. EACH STATE PARTY TO THE CONVENTION SHALL TAKE APPROPRIATE MEASURES CONSISTENT WITH ITS DOMESTIC LAW TO PREVENT THE LOSS, THEFT, MISUSE, OR DAMAGE OF NUCLEAR MATERIAL WITHIN ITS TERRITORY, UNDER ITS JURISDICTION OR UNDER ITS CONTROL ANYWHERE.

2. IN THIS REGARD, THE DOCUMENT INFCIRC/225 OF THE INTERNATIONAL ATOMIC ENERGY AGENCY, ENTITLED "THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL," AND SIMILAR DOCUMENTS WHICH ARE PREPARED FROM TIME TO TIME BY INTERNATIONAL GROUPS OF EXPERTS AND UPDATED AS APPROPRIATE TO ACCOUNT FOR CHANGES IN THE STATE OF THE ART AND STATE OF KNOWLEDGE WITH RE-

GARD TO PHYSICAL PROTECTION OF NUCLEAR MATERIAL ARE A USEFUL BASIS FOR GUIDING STATES PARTIES IN DESIGNING A SYSTEM OF PHYSICAL PROTECTION MEASURES AND PROCEDURES.

3. STATES PARTY TO THE CONVENTION SHALL COOPERATE AND CONSULT WITH EACH OTHER DIRECTLY AND, AS APPROPRIATE, THROUGH INTERNATIONAL ORGANIZATIONS, WITH A VIEW TO IMPROVING TECHNIQUES OF PHYSICAL PROTECTION.

ARTICLE 4

1. EACH STATE PARTY TO THE CONVENTION AGREES NOT TO IMPORT OR EXPORT OR PERMIT THE IMPORT OR EXPORT OF NUCLEAR MATERIAL UNLESS SUCH MATERIAL WILL AT ALL TIMES DURING INTERNATIONAL TRANSFER TO BE SUBJECT TO THE PRECAUTIONS DESCRIBED IN PARAGRAPHS 2, 3, AND 4 OF THIS ARTICLE.

2. PRIOR TO SHIPMENT, NUCLEAR MATERIAL DESIGNATED OR INTENDED FOR INTERNATIONAL TRANSFER SHALL BE CATEGORIZED FOR PURPOSES OF PHYSICAL PROTECTION AS SPECIFIED IN THE ANNEX TO THIS CONVENTION.

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3. DURING HOLDING OR STORAGE INCIDENT TO THE INTERNATIONAL TRANSFER OF NUCLEAR MATERIAL THE LEVELS OF PHYSICAL PROTECTION APPLIED TO SUCH MATERIAL SHALL AT A MINIMUM INCLUDE THE FOLLOWING;

(A) FOR CATEGORY 3 MATERIALS, HOLDING OR STORAGE WITHIN

AN AREA TO WHICH ACCESS IS CONTROLLED;

(B) FOR CATEGORY 2 MATERIALS, HOLDING OR STORAGE WITHIN AN AREA UNDER CONSTANT SURVEILLANCE BY GUARDS OR ELECTRONIC DEVICES, SURROUNDED BY A PHYSICAL BARRIER WITH A LIMITED NUMBER OF POINTS OF ENTRY UNDER APPROPRIATE CONTROL, OR ANY AREA WITH AN EQUIVALENT LEVEL OF PHYSICAL PROTECTION;

(C) FOR CATEGORY 1 MATERIALS, HOLDING OR STORAGE WITHIN A PROTECTED AREA AS DEFINED FOR CATEGORY 2 ABOVE, TO WHICH, IN ADDITION, ACCESS IS RESTRICTED TO PERSONS WHOSE TRUSTWORTHINESS HAS BEEN DETERMINED, AND WHICH IS UNDER SURVEILLANCE BY GUARDS WHO ARE IN CLOSE COMMUNICATION WITH APPROPRIATE RESPONSE FORCES. SPECIFIC MEASURES TAKEN IN THIS CONTEXT SHOULD HAVE AS THEIR OBJECT THE DETECTION AND PREVENTION OF ANY ASSAULT, UNAUTHORIZED ACCESS OR UNAUTHORIZED REMOVAL OF MATERIAL.

4. DURING INTERNATIONAL TRANSPORTATION OF NUCLEAR MATERIAL

SUCH MATERIAL SHALL AT A MINIMUM BE SUBJECT TO THE FOLLOWING"

ING:

(A) FOR CATEGORY TWO AND THREE MATERIALS, TRANSPORTATION SHALL TAKE PLACE UNDER SPECIAL PRECAUTIONS INCLUDING PRIOR ARRANGEMENTS AMONG SENDER, RECEIVER, AND CARRIER, AND PRIOR AGREEMENT BETWEEN NATURAL OR LEGAL PERSONS SUBJECT TO THE JURISDICTION AND REGULATION OF EXPORTING AND IMPORTING STATES, SPECIFYING TIME, PLACE, AND PROCEDURES FOR TRANS-
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FERRING TRANSPORT RESPONSIBILITY.

(B) FOR CATEGORY ONE MATERIALS, TRANSPORTATION SHALL TAKE PLACE UNDER SPECIAL PRECAUTIONS IDENTIFIED ABOVE FOR TRANSPORTATION OF CATEGORY TWO AND THREE MATERIALS, AND, IN ADDITION, UNDER CONSTANT SURVEILLANCE BY ESCORTS AND UNDER CONDITIONS WHICH ASSURE CLOSE COMMUNICATION WITH APPROPRIATE RESPONSE FORCES.

5. IN THE EVENT AN INTERNATIONAL SHIPMENT OF NUCLEAR MATERIAL WILL TRANSIT THE TERRITORY OF ANY STATE OTHER THAN A STATE PARTY TO THE CONVENTION, THE STATE PARTY IN WHOSE TERRITORY THE SHIPMENT ORIGINATES, OR IF THE SHIPMENT DOES NOT ORIGINATE IN THE TERRITORY OF A STATE PARTY, THE STATE PARTY IN WHOSE TERRITORY THE SHIPMENT TERMINATES, SHALL IDENTIFY AND NOTIFY SUCH STATES, INCLUDING THE STATE IN WHICH THE SHIPMENT TERMINATES, OR, IF THE SHIPMENT DOES NOT ORIGINATE IN THE TERRITORY OF A STATE PARTY, THE STATE PARTY IN WHOSE TERRITORY THE SHIPMENT TERMINATES, AND SHALL RECEIVE ASSURANCES IN ADVANCE OF THEIR COOPERATION AND ASSISTANCE IN RECOVERING SUCH MATERIAL IN THE CASE OF LOSS OR THEFT OF MATERIAL DURING TRANSFER.

ARTICLE 5

1. STATES PARTY TO THE CONVENTION SHALL IDENTIFY AND MAKE KNOWN TO EACH OTHER THEIR NATIONAL AGENCIES OR AUTHORITIES HAVING RESPONSIBILITY FOR ESTABLISHING AND MAINTAINING PHYSICAL PROTECTION OF NUCLEAR MATERIALS, NUCLEAR FACILITIES AND NUCLEAR TRANSPORTS AND FOR COORDINATING RECOVERY AND RESPONSE OPERATIONS IN THE EVENT OF LOSS, THEFT, MISUSE OR DAMAGE OF NUCLEAR MATERIAL. STATES PARTY TO THIS CONVENTION SHALL ALSO DESIGNATE AND MAKE KNOWN TO EACH OTHER POINTS OF CONTACT WITHIN THEIR NATIONAL AGENCIES OR AUTHORITIES TO COOPERATE ON MATTERS RELATED TO THE INTERNATIONAL TRANSFER OF NUCLEAR MATERIALS AND ON OTHER MATTERS
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OF MUTUAL CONCERN.

2. IN THE CASE OF LOSS OR THEFT OF NUCLEAR MATERIAL, OR IN THE EVENT OF THREATS TO NUCLEAR MATERIALS, A NUCLEAR FACILITY OR TRANSPORT, STATES PARTY TO THE CONVENTION SHALL COOPERATE AND ASSIST ONE ANOTHER TO THE MAXIMUM FEASIBLE EXTENT IN THE RECOVERY OR PROTECTION OF SUCH MATERIAL. IN PARTICULAR:

(A) A STATE PARTY THAT KNOWS OF, OR HAS REASON TO KNOW THAT THERE HAS BEEN, A LOSS OR THEFT OF NUCLEAR MATERIAL OR RISK THEREOF, OR A THREAT TO NUCLEAR MATERIAL, A NUCLEAR FACILITY OR TRANSPORT SHALL IMMEDIATELY NOTIFY OTHER CONCERNED STATES AND, AS APPROPRIATE, INTERNATIONAL ORGANIZATIONS.

(B) THE STATES PARTIES CONCERNED SHALL EXCHANGE INFORMATION WITH EACH OTHER AND, AS APPROPRIATE, INTERNATIONAL ORGANIZATIONS, WITH A VIEW TO PROTECTING THREATENED NUCLEAR MATERIAL, NUCLEAR FACILITIES OR TRANSPORTS OR RECOVERING LOST OR STOLEN NUCLEAR MATERIAL, AND SHALL, AS APPROPRIATE:

I. COORDINATE THEIR EFFORTS THROUGH DIPLOMATIC, POLICE OR OTHER TECHNICAL CHANNELS;

II. OFFER ASSISTANCE TO OTHER STATES PARTIES;

III. ACCEPT ASSISTANCE OFFERED BY OTHER STATES PARTIES;
AND

IV. EXPEDITE THE RETURN OF LOST OR STOLEN NUCLEAR MATERIAL TO THE STATE OR PERSONS SUFFERING THE LOSS.

3. STATES PARTIES SHALL FURTHER COOPERATE AND CONSULT WITH EACH OTHER AND, AS APPROPRIATE, WITH INTERNATIONAL ORGANIZATIONS WITH A VIEW TO IMPROVING THE ABILITY TO DETECT
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THE LOSS OR THEFT OF NUCLEAR MATERIALS AND TO RECOVER SUCH MATERIAL.

ARTICLE 6

1. CONSISTENT WITH ITS DOMESTIC LAW, EACH STATE PARTY TO THIS CONVENTION SHALL TAKE SUCH STEPS AS ARE NECESSARY TO MAKE THE FOLLOWING PUNISHABLE OFFENSES UNDER ITS CRIMINAL LAW:

(A) ANY THEFT OF NUCLEAR MATERIAL;

(B) INTENTIONAL MISUSE, DAMAGE OR DESTRUCTION OF NUCLEAR MATERIAL;

(C) ANY INTENTIONAL ENTRY INTO THAT AREA OF A NUCLEAR FA-

CILITY OR NUCLEAR TRANSPORT CONTAINING SUCH MATERIAL, WITH THE INTENT TO DO ANY OF THE ACTS DESCRIBED IN PARAGRAPH (A) OR (B) ABOVE;

(D) INTENTIONALLY CAUSING PHYSICAL DAMAGE TO, DESTRUCTION OF, OR SEIZING A NUCLEAR FACILITY OR A NUCLEAR TRANSPORT;

(E) A CONSPIRACY TO COMMIT, ATTEMPT TO COMMIT OR THREAT TO COMMIT ANY OF THE OFFENSES DESCRIBED IN THIS ARTICLE.

2. "INTERNATIONAL OFFENSE" MEANS AN OFFENSE SET FORTH IN PARAGRAPH 1 OF THIS ARTICLE IF IT IS DIRECTED AGAINST NUCLEAR MATERIAL OR A NUCLEAR TRANSPORT WHILE THE MATERIAL OR TRANSPORT IS IN INTERNATIONAL TRANSFER. ARTICLES 9, 10 AND 11 APPLY ONLY TO INTERNATIONAL OFFENSES.

ARTICLE 7

1. UPON BEING SATISFIED THAT THE CIRCUMSTANCES SO WARRANT, THE STATE PARTY IN WHOSE TERRITORY THE ALLEGED OFFENDER CONFIDENTIAL

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IS PRESENT, SHALL TAKE THE APPROPRIATE MEASURES UNDER ITS INTERNAL LAW SO AS TO ENSURE HIS PRESENCE FOR THE PURPOSE OF PROSECUTION OR EXTRADITION. SUCH MEASURES SHALL BE MADE KNOWN WITHOUT DELAY TO THE OTHER STATES CONCERNED, AND, AS APPROPRIATE, INTERNATIONAL ORGANIZATIONS.

2. ANY PERSON REGARDING WHOM THE MEASURES REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE ARE BEING TAKEN SHALL BE ENTITLED:

(A) TO COMMUNICATE WITHOUT DELAY WITH THE NEAREST APPROPRIATE REPRESENTATIVE OF THE STATE OF WHICH HE IS A NATIONAL OR WHICH IS OTHERWISE ENTITLED TO PROTECT HIS RIGHTS, OR, IF HE IS A STATELESS PERSON, WHICH HE REQUESTS AND WHICH IS WILLING TO PROTECT HIS RIGHTS; AND,

(B) TO BE VISITED BY A REPRESENTATIVE OF THAT STATE.

ARTICLE 8

THE STATE PARTY IN WHOSE TERRITORY THE ALLEGED OFFENDER IS PRESENT, SHALL, IF IT DOES NOT EXTRADITE HIM, SUBMIT, WITHOUT EXCEPTION WHATSOEVER AND WITHOUT UNDUE DELAY, THE CASE TO ITS COMPETENT AUTHORITIES FOR THE PURPOSE OF PROSECUTION THROUGH PROCEEDINGS IN ACCORDANCE WITH THE LAWS OF THAT STATE.

ARTICLE 9

1. TO THE EXTENT THAT INTERNATIONAL OFFENSES ARE NOT LISTED AS EXTRADITABLE OFFENSES IN ANY EXTRADITION TREATY

EXISTING BETWEEN STATES PARTIES, THEY SHALL BE DEEMED TO BE INCLUDED AS SUCH THEREIN. STATES PARTIES UNDERTAKE TO INCLUDE THOSE OFFENSES AS EXTRADITABLE OFFENSES IN EVERY FUTURE EXTRADITION TREATY TO BE CONCLUDED BETWEEN THEM.

2. IF A STATE PARTY WHICH MAKES EXTRADITION CONDITIONAL
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ON THE EXISTENCE OF A TREATY RECEIVED A REQUEST FOR EXTRADITION FROM ANOTHER STATE PARTY WITH WHICH IT HAS NO EXTRADITION TREATY, IT MAY, IF IT DECIDES TO EXTRADITE CONSIDER THIS CONVENTION AS THE LEGAL BASIS FOR EXTRADITION IN RESPECT OF THOSE OFFENSES. EXTRADITION SHALL BE SUBJECT TO THE PROCEDURAL PROVISIONS AND OTHER CONDITIONS OF THE LAW OF THE REQUESTED STATE.

3. STATES PARTIES WHICH DO NOT MAKE EXTRADITION CONDITIONAL ON THE EXISTANCE OF A TREATY SHALL RECOGNIZE THESE OFFENSES AS EXTRADITABLE OFFENSES BETWEEN THEMSELVES SUBJECT TO THE PROCEDURAL PROVISIONS AND OTHER CONDITIONS OF THE LAW OF THE REQUESTED STATE.

4. EACH OF THE OFFENSES SHALL BE TREATED, FOR THE PURPOSE OF EXTRADITION BETWEEN STATES PARTIES, AS IF IT HAD BEEN COMMITTED NOT ONLY IN THE PLACE IN WHICH IT OCCURRED BUT ALSO IN THE TERRITORY OF THE STATE OF WHICH THE ALLEGED OFFENDER IS A NATIONAL AND IN THE TERRITORIES OF THE EXPORTING, IMPORTING AND TRANSITTED STATES PARTIES..

ARTICLE 10

ANY PERSON REGARDING WHOM PROCEEDINGS ARE BEING CARRIED OUT IN CONNECTION WITH AN INTERNATIONAL OFFENSE, SHALL BE GUARANTEED FAIR TREATMENT AT ALL STAGES OF THE PROCEEDINGS.

ARTICLE 11

1. THE STATES PARTIES SHALL AFFORD ONE ANOTHER THE GREATEST MEASURE OF ASSISTANCE IN CONNECTION WITH CRIMINAL PROCEEDINGS BROUGHT IN RESPECT OF INTERNATIONAL OFFENSES, INCLUDING THE SUPPLY OF EVIDENCE AT THEIR DISPOSAL NECESSARY FOR THE PROCEEDINGS.

2. THE PROVISIONS OF PARAGRAPH 1 OF THIS ARTICLE SHALL NOT AFFECT OBLIGATIONS CONCERNING MUTUAL JUDICIAL ASSISTANCE
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EMBODIED IN ANY OTHER TREATY.

ARTICLE 12

1. EACH STATE PARTY SHALL COMMUNICATE TO THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY THE LAWS AND REGULATIONS PROMULGATED TO GIVE EFFECT TO THIS CONVENTION. THE AGENCY SHALL COMMUNICATE PERIODICALLY LAWS AND REGULATIONS SO PROVIDED TO ALL STATES PARTIES TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

2. THE STATE PARTY WHERE AN ALLEGED OFFENDER IS PROSECUTED FOR AN INTERNATIONAL OFFENSE SHALL COMMUNICATE THE FINAL OUTCOME OF THE PROCEEDINGS TO THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY WHO SHALL TRANSMIT THE INFORMATION TO ALL PARTIES TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

ARTICLE 13

1. ANY DISPUTE BETWEEN TWO OR MORE STATE PARTIES CONCERNING THE INTERPRETATION OR APPLICATION OF THIS CONVENTION WHICH IS NOT SETTLED BY NEGOTIATION SHALL, AT THE REQUEST OF ONE OF THEM BE SUBMITTED TO ARBITRATION. IF WITHIN SIX MONTHS FROM THE DATE OF THE REQUEST FOR ARBITRATION, THE PARTIES ARE UNABLE TO AGREE ON THE ORGANIZATION OF THE ARBITRATION, ANY ONE OF THOSE PARTIES MAY REFER THE DISPUTE TO THE INTERNATIONAL COURT OF JUSTICE BY REQUEST IN CONFORMITY WITH THE STATUTE OF THE COURT.

2. EACH STATE PARTY MAY AT THE TIME OF SIGNATURE OR RATIFICATION OF THIS CONVENTION OR ACCESSION THERETO DECLARE THAT IT DOES NOT CONSIDER ITSELF BOUND BY PARAGRAPH 1 OF THIS ARTICLE. THE OTHER STATES PARTIES SHALL NOT BE BOUND BY PARAGRAPH 1 OF THIS ARTICLE WITH RESPECT TO ANY STATE PARTY WHICH HAS MADE SUCH A RESERVATION.
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3. ANY STATE PARTY WHICH HAS MADE A RESERVATION IN ACCORDANCE WITH PARAGRAPH 2 OF THIS ARTICLE MAY AT ANY TIME WITHDRAW THAT RESERVATION BY NOTIFICATION TO THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

ARTICLE 14

THIS CONVENTION SHALL BE OPEN FOR SIGNATURE BY ALL STATES PARTIES TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY, UNTIL (INSERT DATE) AT THE HEADQUARTERS OF THE AGENCY IN VIENNA.

ARTICLE 15

THIS CONVENTION IS SUBJECT TO RATIFICATION. THE INSTRUMENTS OF RATIFICATION SHALL BE DEPOSITED WITH THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

ARTICLE 16

THIS CONVENTION SHALL REMAIN OPEN FOR ACCESSION BY ANY STATE PARTY TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY. THE INSTRUMENTS OF ACCESSION SHALL BE DEPOSITED WITH THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

ARTICLE 17

1. THIS CONVENTION SHALL ENTER INTO FORCE ON THE THIRTIETH DAY FOLLOWING THE DATE OF DEPOSIT OF THE TENTH INSTRUMENT OF RATIFICATION OR ACCESSION WITH THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

2. FOR EACH STATE RATIFYING OR ACCEDING TO THE CONVENTION, AFTER THE DEPOSIT OF THE TENTH INSTRUMENT OF RATIFICATION
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OR ACCESSION, THE CONVENTION SHALL ENTER INTO FORCE ON THE THIRTIETH DAY AFTER DEPOSIT BY SUCH STATE OF ITS INSTRUMENT OF RATIFICATION OR ACCESSION.

ARTICLE 18

THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY SHALL INFORM ALL STATES PARTIES TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY INTER ALIA:

(A) OF SIGNATURES TO THIS CONVENTION, OF THE DEPOSIT OF INSTRUMENTS OF RATIFICATION OR ACCESSION IN ACCORDANCE WITH ARTICLES 15, 16 AND 17, AND OF ANY OTHER COMMUNICATIONS RECEIVED UNDER THIS CONVENTION FOR CIRCULATION IN ACCORDANCE WITH THE TERMS OF THIS CONVENTION;

(B) OF THE DATE ON WHICH THIS CONVENTION WILL ENTER INTO

FORCE IN ACCORDANCE WITH ARTICLE 15.

ARTICLE 19

1. THE ORIGINAL OF THIS CONVENTION, OF WHICH THE CHINESE, ENGLISH, FRENCH, RUSSIAN AND SPANISH TEXTS ARE EQUALLY AUTHENTIC, SHALL BE DEPOSITED WITH THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY WHO SHALL SEND CERTIFIED COPIES THEREOF TO ALL STATE PARTIES TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

2. THE DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY SHALL REGISTER THIS CONVENTION WITH THE SECRETARIAT OF THE UNITED NATIONS IN ACCORDANCE WITH ARTICLE 102 OF THE CHARTER OF THE UNITED NATIONS.

IN WITNESS WHEREOF THE THE UNDERSIGNED, BEING DULY AUTHORIZED THERE;O BY THEIR RESPECTIVE GOVERNMENTS, HAVE SIGNED
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THIS CONVENTION, OPENED FOR SIGNATURE AT VIENNA ON (INSERT DATE).

ANNEX

THIS IS IDENTICAL TO TABLE USED IN SUPPLIERS GUIDELINES, EXCEPT IN FOOTNOTE A., "PLUTONIUM-239" IS REPLACED WITH "PLUTONIUM." END TEXT.

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<< END OF DOCUMENT >>

Message Attributes

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Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
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